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*File 09/591,147***Certificate of Transmission under 37 CFR 1.8**

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office

on August 8, 2006
Date



Signature

Oleh Weres

Typed or printed name of person signing Certificate

57,499

Registration Number, if applicable

707-252-4620

Telephone Number

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CORRECTED Petition to Withdraw Holding of Abandonment
Patent Application of TRUFANT 09/591,147 37 CFR 1.181(a)

This petition was Faxed yesterday, August 7, 2006 with a
printing error, whereby the first 2 lines on page 2
were deleted. PLEASE FILE THIS CORRECTED PETITION IN
ITS PLACE

This collection of information is required by 37 CFR 1.8. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.8 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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AUG 08 2006

Application Number: 09/591,147
Applicant: Carol Ann Trufant
Examiner: Dmitry Suhol
Art Unit: 3714

Petition to Withdraw Holding of Abandonment Under 37 CFR 1.181(a)Facts:

All elected claims in the above identified '147 application have been twice rejected. Applicant (at that time represented by another practitioner) filed a Notice of Appeal which was entered January 9, 2006. Subsequently, she decided to file a Continuation-in-Part of the original '147 application instead of proceeding with the appeal. Also, applicant decided to retain a different practitioner to represent her, and was without representation for a period of several months.

While without representation, applicant was told by PTO personnel that she would be able to buy a five (5) month extension to normal the two (2) month period following the filing date of her Notice of Appeal within which to either (a) file an appeal brief, or (b) file a Continuation-in-Part. Based on this advice, applicant understood that she had until August 9 at the latest to file a CIP. Applicant's affidavit reciting these facts is attached hereto.

Applicant retained me, Oleh Weres (Reg. No. 57,499) to represent her July 13, 2006 and the Power of Attorney was received and entered July 14, 2006.

Shortly thereafter, applicant received a Notice of Abandonment dated July 10, 2006.

Applicable Law:

Section § 133 of the patent statute sets a limit of six months to reply to an action of the Patent and Trademark Office:

"Upon failure of the applicant to prosecute the application within six months after any

action therein, of which notice has been given or mailed to the applicant . . . the application shall be regarded as abandoned . . . " [emphasis added] 35 U.S.C. § 133.

However, a Notice of Appeal is an action by applicant, not an action by the PTO of which applicant is subsequently notified. Therefore, § 133 does not apply, and the entire 5 month period of extended time set provided in 37 C.F.R. § 136 is available upon payment of the required fee. ("The time periods set forth in §§ 191 and 192 are subject to the provisions of § 1.136 for patent applications . . . " 37 CFR 1.191(d). Also see MPEP § 1206, "TIME FOR FILING APPEAL BRIEF.")

Therefore, the Notice of Appeal was mailed prematurely, thirty (30) days before the maximum period available for applicant to proceed with the case had expired.

Relief requested:

Applicant respectfully requests that the Notice of Abandonment be withdrawn as premature.

Fee

This petition does not require a fee. MPEP § 711.03(c), Part I.

Related Actions

Together with this Petition to Withdraw Holding of Abandonment Under 37 CFR 1.181(a), applicant has filed a Petition for Extension of Time Under 37 CFR 1.136(a) and paid the fee required to buy a five month extension of time.

On this day, applicant has filed a Continuation-in-Part that claims benefit of the '147 application; the computer generated preliminary receipt is attached hereto.

Respectfully submitted,



Oleh Weres, Reg. No. 57,499
Practitioner representing Applicant